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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,573	03/29/2005	Robert David Black	ROCKCO P69AUS	9147
20210 7590 02/19/2010 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301				
EXAMINER HUJAZ, OMAR F				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/529,573

**Applicant(s)**

BLACK ET AL.

**Examiner**

OMAR HIJAZ

**Art Unit**

3633

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

The Amendment filed on October 22, 2009 has been entered. Claims 15 and 21-23 have been amended and claims 1-14 have been previously cancelled. Therefore, claims 15-25 are now pending in the application.

#### *Response to Amendment*

1. The previous 35 USC 112 rejections are withdrawn in light of applicant's amendments.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claim 21, at lines 41-43, there is an inadequate written description of what comprises the brace being **releasably securable** to a respective one of the adjustable props.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 21, at line 41, the recitation "a brace is pivotably fixed" renders the claim indefinite because it lacks antecedent basis with respect to the specification.

As per claim 23, at lines 3-4, the recitation "the first end of the strut being attachable to the extensible leg telescopic" renders the claim indefinite because it is unclear.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 15-17 and 19-24, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Blier (U.S. Patent No. 4,371,057).

As per claim 15, Blier teaches an access unit for covering an opening in an upper floor (scaffolding; abstract), the access unit comprising: a support frame (frame assembly of figure 1A below) having a generally O-shaped configuration with an open central region (as illustrated, the support frame has a generally O-shaped shape with an open central region; figure 1A below), the support frame including U-shaped first and second members (as illustrated, the support device has first and second U-shaped members which form the O-shape; figure 1A below) with an open end of each U-shaped

member facing one another (the U-shaped members are facing one another, hence forming the O-shape; figure 1A below), each of the first and second members comprises a base frame (32/33) of fixed width (the base frame is adjustable, however it is understood that when it is not being adjusted, it maintains a **fixed width**) defining one end of the open central region (as illustrated, each of the first and second U-shaped members has a base frame which defines one end of the open central region; figure 1A below), and a pair of spaced apart side arms (as illustrated, the first U-shaped member has a pair of spaced apart arms, and the second U-shaped member has a pair of spaced apart arms; figure 1A below) extending parallel to one another from opposite ends of the base frame (as illustrated, the arms are parallel and on opposite sides of the base frame; figure 1A below); the pair of side arms of the first member being telescopically received within the pair of side arms of the second member, to facilitate adjustment of a length of the open central region (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below) and the open central region defined by a base frame and the pair of spaced apart side arms of the second member, being completely unobstructed and open without anything being located between the base frames for the first and second members (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1A below) so as to allow unhindered passage of a person through the open central region (it is understood that this would allow for passage of a person through the central region); and the telescopic adjustment of the pair of spaced apart side arms facilitates desired spacing of the base frame of the

first member from the base frame of the second member over a range of distances (the members are telescopic, therefore the members are adjustable over a range of distances); and each of the spaced apart side arms of the second member having a clamp for temporary securing of the side arms of the first member to the side arms of the second member at a pre-determined relationship and maintaining the desired spacing of the base frame of the first member from the base frame of the second member (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13);

the second member having a pair of spaced apart props (legs 12/14) which are pivotably attached (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60; and therefore capable of pivoting) adjacent the base frame of the second member for supporting the second member at a desired level (as illustrated, the height of the base frame of the second member can be adjusted to the desired level; figure 4);

the base frame of the first member being adapted for position at a first location (as illustrated, the first member base frame is positioned at a first location; figure 4);

and the pair of spaced apart adjustable props facilitate positioning of the base frame of the second member at substantially a same level as the base frame of the first member (as illustrated, the base frame of the first and second members are level; figure 4) so as to position the support frame of the access unit within a stairwell in a substantially horizontal orientation (as illustrated, the support device is in a stairwell and provides a horizontal orientation; figure 4); the base frame of the first member has a

flange for overlying a support surface at the first location to facilitate retaining the base frame of the first member at the first location (the base frame members are made of two back to back angle members whose flange portion is capable of overlying a stair).

As per claim 16, Blier discloses a length of each adjustable prop is variable (as illustrated, the legs 12/14 are adjustable; figure 4) to facilitate maintaining the access unit in one of a horizontal orientation and at a desired angle relative to horizontal (as illustrated, the support device is in a stairwell and provides a horizontal orientation; figure 4; desired angles are capable of being attained).

As per claim 17, Blier discloses a removable platform member (41) for covering the open central region, when the platform member is in a first working position (as illustrated, the platform 41 is covering the open central region; figure 4), and preventing passage of one of the person and an article located above the support unit from inadvertently passing through the open central region (this would prevent passage of articles); and the platform member, when the platform member is in a second position removed from the open central region, allowing unimpeded passage of at least one of the person and the article through the open central region (when the platform is removed, the open region would be capable of allowing for the passage of articles or persons).

As per claim 19, Blier teaches a length of each of the pair of spaced apart side arms of the first member is greater than a length of the base of the frame of the first member (as illustrated, the arms of the first member are telescopic and may be

extended out to a length greater than the length of the base frame of the first member; figure 1A below).

As per claim 20, Blier teaches a space between the base frame of the first member and the base frame of the second member is completely unobstructed (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1; as illustrated, the scaffold has an open central region; figure 1A below), a space between the opposed legs of the first member is completely unobstructed (as illustrated, the space between all of the opposed legs of the scaffold are unobstructed; figure 1A below), and the space between the opposed legs of the second member is completely unobstructed (as illustrated, the space between all of the opposed legs of the scaffold are unobstructed; figure 1A below).

As per claim 21, Blier teaches an access unit for enclosing and facilitating passage through an opening in an upper floor (scaffolding; abstract; see figure 4), the access unit comprising: a support frame (frame assembly of figure 1A below) comprising: first and second members (as illustrated, the support device has first and second U-shaped members; figure 1A below), each of the first and second members comprises a base frame (32/33) of fixed length (the base frame is adjustable, however it is understood that when it is not being adjusted, it maintains a **fixed length**), and a pair of side arms (as illustrated, the first member has a pair of side arms, and the second member has a pair of side arms; figure 1A below) each of which are coupled to and extend from opposite ends of the base frame (as illustrated, the arms are coupled to and extend from opposite sides of each base frame; figure 1A below), the side arms of



the first and second members respectively extend parallel to each other (as illustrated, the side arms of the first and second members are parallel to each other; figure 1A below) and normal to the associated base frames (as illustrated, the side arms of the first and second members are normal to each base frame; figure 1A below) such that the first and second members are substantially U-shaped (as illustrated, the side arms of the first and second members along with each base frame are substantially U-shaped; figure 1A below) and aligned with open ends of the first and second members facing one another (as illustrated, the arms of the first and second U-shaped members are facing one another; figure 1A below) the pair of side arms of the first member being telescopically received within the pair of side arms of the second member, to facilitate adjustment of a length of an open central region (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below) and the open central region (as illustrated, the scaffold has an open central region; figure 1A below) defined by a base frame and the pair of spaced apart side arms of the second member, being completely unobstructed and open without anything being located between the opposed side arms of the first and second members (as illustrated, the space between the opposed side arms of the first and second members is unobstructed; figure 1A below) and without anything being located between the base frames of the first and second members (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1A below) to allow unhindered passage of a person through the open central

region (it is obvious that this would allow for passage of a person through the central region);

the telescopic adjustment of the pairs of spaced apart side arms of the first and second members facilitates desired spacing of the base frame of the first member from the base frame of the second member (the members are telescopic, therefore the spacing between the first and second base members are adjustable); and at least one of the spaced apart side arms of the first and second members having a clamp for temporarily securing the side arms of the first member to the side arms of the second member at a pre-determined relationship and maintaining the desired spacing of the base frame of the first member from the base frame of the second member (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13; it is understood that this would maintain the desired spacing of the base frame of the first member from the base frame of the second member);

the base frame of the first member has a flange for engaging the upper floor (the base frame members are made of two back to back angle members whose flange portion is capable of overlying a stair) defining the opening therein to facilitate retaining the base frame and the side arms of the first member within the opening in the upper floor and substantially level with the upper floor (as illustrated, the base frame and the side arms of the first member are placed at a desired level with the upper floor; figure 4; therefore it is understood that by using the flange of the back to back angle members, instead of the legs, the base frame and the side arms of the first member are capable of being placed at a desired level including being substantially level with the upper floor).

the second member having a pair of spaced apart props (legs 12/14) which are pivotably attached (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60) to the side arms of the second member at a location along the side arms that is spaced from the base frame of the second member (as illustrated, the prop 12/14 is attached to each side arm of the second U-shaped member and spaced from the base frame of the second U-shaped member; figure 1A below) for supporting the second member at a desired level (as illustrated, the prop 12/14 of each side arm of the second u-shaped member is telescopically adjusted to the desired level; figure 4);

the pair of spaced apart adjustable props facilitate supporting the base frame of the second member within a stairwell in a substantially horizontal orientation relative to the upper floor (as illustrated, the props 12/14 are supporting the base frame in a stairwell and provide a horizontal orientation relative to an upper floor; figure 4);

a brace is fixed to a respective one of the side arms of the second member and to one of the adjustable props (as illustrated, a brace 26 connects the adjustable prop 12/14 with the arm of the second member; figure 1A below);

a removable platform member (41) for overlying the upper floor and (as illustrated, the platform lies over the upper floor; figure 4) and covering both the opening in the upper floor and the open central region, when the platform member is in a first working position (as illustrated, the platform 41 is covering an opening above the stairwell and the open central region; figure 4), and preventing passage of at least one a person and an article located above the support unit through the open central region (it is understood that the platform member 41 would prevent passage of articles or a

person); and the platform member, in a second position displaced from the open central region, allowing unhindered passage of at least one of the person and the article through the open central region (it is understood that when the platform is removed such as in figure 1, the open region would be capable of allowing for the passage of articles or persons).

As per claim 22, Blier teaches a constructional unit comprising (scaffolding; abstract): a support frame (frame assembly of figure 1A below) which is O-shaped in plan bounding an open central region (as illustrated, the support frame has a generally O-shaped shape with an open region; figure 1A below), the support frame including first and second members which are each U-shaped in plan (as illustrated, the support device has first and second U-shaped members; figure 1A below), each of the first and the second members being in the form of a base frame (as illustrated, each of the first and second members has a base frame; figure 1A below) of fixed width (the base frame is adjustable, however it is understood that when it is not being adjusted, it maintains a **fixed width**) from which extend two side arms (as illustrated, the first member has a pair of spaced apart arms, and the second member has a pair of spaced apart arms; figure 1A below) and an open end of each of the first and the second U-shaped members facing one another (the members are facing one another; figure 1A below); the first and the second members each having their side arms telescopically engaged to define sides to the open central region of the O-shaped support frame (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below); the telescopic engagement providing for

the spacing of the first base frame from the second base frame to be adjustable over a range of distances (the members are telescopic, therefore the members are adjustable over a range of distances) and for the temporary securing of the first member to the second member at a predetermined spacing (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13);

the base frame of the first member being provided whereby the base frame is located at a first level at a first working location (figure 1A below); the second member being adapted for location at a second working location off-set from the first working location, by means of at least one extensible leg (12") (as illustrated, the location of the first member is offset from the location of the second member; figure 4), the, or each, extensible leg being pivotally attached at or near one end of the leg to the base frame of the second member or to a side arm thereof (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60); the opposite end to the one end of the, or each, extensible leg being adapted for location vertically below the first level (as illustrated, the opposite end of the legs 12/14 may be located at different levels; figure 4).

As per claim 23, Bluer teaches the, or each, extensible leg is provided with a strut (14) with first and second ends (figure 4), the first end of the strut being attachable to the extensible leg, the second end of the strut being attachable to the second member (as illustrated, the member 14 is attached to both the leg 12 and the second member; see figures 4 and 1A below), the prop in use providing for a fixed angular alignment of

the leg relative to the second member (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60).

As per claim 24, Blier teaches a platform member (41) is provided to which, in a first working configuration, serves to cover the open central region of the support frame (as illustrated, the platform 41 is covering the open central region; figure 4) so as to prevent the inadvertent passage of an article or person through the open central region (this would prevent passage of articles) and a second working configuration wherein the platform member is withdrawn to allow access through the open central region (when the platform is removed, the open region would be capable of allowing for the passage of articles or persons).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blier (U.S. Patent No. 4,371,057) in view of Testu (FR Patent No. 2,663,075).

As per claim 18, Blier fails to disclose the platform member is at least in part of open construction to enable viewing through the open central region when the platform member is in the first working position.

Testu discloses a horizontal stairwell scaffolding with a covering lock lattice whereby the lock lattice is constructed out of metallic lattice (page 5, line 2 of translated

document) it is therefore understood that such a material is capable of being viewed through.

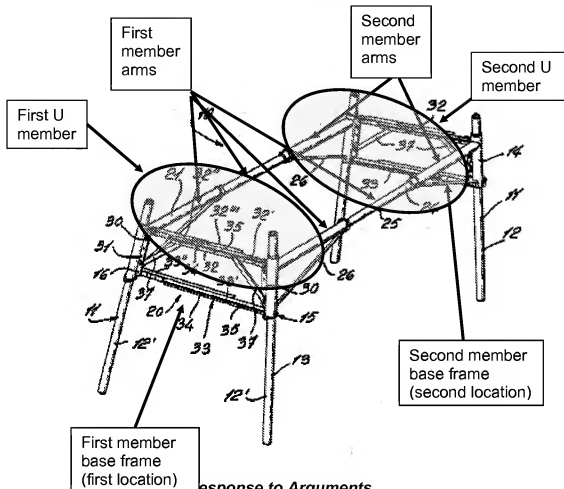
Therefore from the teaching of Testu, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the telescopic scaffolding of Blier to include a lattice platform as taught by Testu in order to allow viewing through the platform.

As per claim 25, Blier fails to disclose the platform member is, at least in part, of openwork construction to enable a view to be obtained through the open central region, when the platform member is in the first working configuration.

Testu discloses a horizontal stairwell scaffolding with a covering lock lattice whereby the lock lattice is constructed out of metallic lattice (page 5, line 2 of translated document) it is therefore understood that such a material is capable of being viewed through.

Therefore from the teaching of Testu, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the telescopic scaffolding of Blier to include a lattice platform as taught by Testu in order to allow viewing through the platform.

**Figure 1A**



## Response to Arguments

9. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that primary reference Blier prevents full access to work surfaces adjacent the side of the scaffold unit and inhibits, free passage on/off the scaffold unit. However, the examiner believes that all of the claim limitations have been met and that there would also be sufficient passage through all sides and openings of the Blier scaffolding dependant upon how high or wide the members of the telescoping scaffold are adjusted. In addition, applicant argues that figure 4 of Blier does not show the scaffold unit is used in conjunction with an opening in a second story floor of a dwelling



under construction. However it is important to note that the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case it is understood that the scaffolding of Blier could be used in conjunction with an opening in a second story floor, with a platform so that a person could walk across or open, so that articles can pass through. In addition, applicant's amendment with respect to the base members being a fixed width/length holds limited patentable weight to the claims because although the base members of Blier are adjustable, they are also capable of maintaining a fixed length.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR HIJAZ whose telephone number is (571)270-5790. The examiner can normally be reached on Mon-Fri 9:30 a.m. - 7:00 p.m. (alternating Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571)272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OFH

/Brian E. Glessner/

Primary Examiner, Art Unit 3633